

CORRECTED EXHIBIT 4

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

AUTHENTICOM, INC.,

Plaintiff,

-vs-

Case No. 17-CV-318-JDP

CDK GLOBAL, LLC and
THE REYNOLDS AND REYNOLDS COMPANY,

Madison, Wisconsin
June 26, 2017
9:03 a.m.

Defendants.

STENOGRAPHIC TRANSCRIPT OF FIRST DAY OF EVIDENTIARY HEARING
(MORNING SESSION)

HELD BEFORE CHIEF U.S. DISTRICT JUDGE JAMES D. PETERSON

APPEARANCES:

For the Plaintiff:

Godfrey & Kahn S.C.
BY: JENNIFER L. GREGOR
One East Main Street, Suite 500
Madison, Wisconsin 53701

Kellogg, Hansen, Todd, Figel & Frederick, P.L.L.C.
BY: MICHAEL N. NEMELKA
AARON M. PANNER
DAVID L. SCHWARZ
DEREK T. HO
JOANNA T. ZHANG
JOSHUA HAFENBRACK
KEVIN J. MILLER
1615 M Street, N.W.
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Jennifer L. Dobbratz, RMR, CRR, CRC
U.S. District Court Federal Reporter
United States District Court
120 North Henry Street, Rm. 410
Madison, Wisconsin 53703
(608) 261-5709

1 A Never once.

2 Q Does the user emulation software that Authenticom uses in
3 any way alter or copy the DMS software itself?

4 A It does not.

5 Q Ms. Miller talked about software being on the box, hostile
6 software being on the box. Do you install any software on the
7 DMS system?

8 A Never have and never would.

9 Q What is the advantage for dealers to automated approach of
10 data extraction instead of having to do it manually?

11 A Dealers like to focus on selling and servicing cars.
12 That's their core competency. Automating the process is just
13 like, you know, robotics on an assembly line. Essentially we do
14 what humans could do only much faster and more efficiently, and
15 we eliminate errors.

16 Q After you've -- so what do you do after Authenticom pulls
17 the data? What does it do next?

18 A So again we akin that to the United Nations, and we've got
19 all these different formats and business rules from the
20 dealership, so what we do is we normalize it. We then put it
21 into our database and we create -- we run -- actually before it
22 goes into the database, we normalize components of it. For
23 example, we validate that a dollar amount is actually a dollar
24 amount, a phone number is a phone number, VIN numbers are VIN
25 numbers, et cetera.

1 not.

2 Q What about credit card information?

3 A I don't even know that credit card information is stored on
4 the DMS. We do not access it if it was.

5 Q What about OEM information?

6 A We do not have access to any OEM information.

7 Q What about defendants' intellectual property?

8 A We do not have any access to the defendants' intellectual
9 property.

10 Q Ms. Miller, I believe, talked about different levels of
11 authorization --

12 A Exactly.

13 Q -- that dealers have, that the dealership owner and IT
14 director have a certain level and regular employees have another
15 level. What level do dealers grant Authenticom?

16 A Generally the only capabilities that we have is to, you
17 know, write or edit or receive reports.

18 Q What about levels of authorization permission though in
19 terms of accessing data. Do you have the same access that a
20 dealership owner has or --

21 A Absolutely not.

22 Q Or a regular employee?

23 A Typically a regular employee, yes.

24 Q What about other examples of a user dealer's internal HR
25 records, payroll records, and financial records. Does

1 A That's correct.

2 Q You mentioned there are instances where dealers pay you.
3 What is that?

4 A Most notably would be the Lithia group.

5 Q What is the Lithia group?

6 A Third or fourth largest publicly traded dealership group in
7 North America.

8 Q And they pay you to use DealerVault?

9 A They do.

10 THE COURT: How do you spell Lithia?

11 THE WITNESS: L-I-T-H-I-A. I'm the world's worst
12 speller, so that's not guaranteed.

13 BY MR. NEMELKA:

14 Q Real quick, why does Lithia pay you for DealerVault?

15 A They're ecstatic about the control, transparency, reporting
16 and audit capabilities that it gives them over the movement of
17 their data.

18 Q Okay. Now let's go to Authenticom pricing. What does
19 Authenticom charge for data polling?

20 A So for a single file type, \$25 per month. For two or more
21 up to the seven file types that we provide, \$50.

22 Q Does Authenticom provide bidirectional access?

23 A We do.

24 THE COURT: What does that mean?

25 BY MR. NEMELKA:

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

AUTHENTICOM, INC.,

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-vs-

Case No. 17-CV-318-JDP

CDK GLOBAL, LLC and
THE REYNOLDS AND REYNOLDS COMPANY,

Madison, Wisconsin
June 27, 2017
8:04 a.m.

Defendants.

STENOGRAPHIC TRANSCRIPT OF SECOND DAY OF EVIDENTIARY HEARING
(MORNING SESSION)

HELD BEFORE CHIEF U.S. DISTRICT JUDGE JAMES D. PETERSON

APPEARANCES:

For the Plaintiff:

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Madison, Wisconsin 53703
(608) 261-5709

1 THE WITNESS: No, no, no, no. It's a flavor originally
2 designed for a fossil of an operating system called Pick that is
3 still running on their systems today.

4 THE COURT: Okay.

5 THE WITNESS: And that's the query language.

6 THE COURT: Okay. I get it.

7 THE WITNESS: It's called English.

8 THE COURT: I got it.

9 BY MS. GREGOR:

10 Q How does the level of access that Authenticom has compare
11 to your access as the IT administrator for the dealership?

12 A I have the keys to the kingdom. There's not a feature that
13 I can't run, full access to every single thing on every single
14 account. Authenticom has access to limited accounts and to a
15 single function, ENG, for the purpose of retrieving the data
16 that I need them to retrieve so that they can -- I like to call
17 it feeding the children. All the third-party vendors that need
18 the data, I call that feeding the children. So they gather the
19 data, normalize the data, check the addresses against the NCOA
20 database, and then send the feeds to a couple dozen third-party
21 vendors that I use.

22 Q Did you hear testimony yesterday about manual reporting?

23 A I did hear that. I heard that quite a bit, and I have to
24 say I understand that CDK and Reynolds offer a way for me to do
25 that manually. Here is the thing about manual: Manual doesn't

1 work. Take the case of the open recall vendor that was here
2 yesterday. It's 50 stores. He's got to find 50 people, one in
3 each store, to manually run a report, grab the data, and then
4 transmit it to Authenticom. These people can't have a day off.
5 They can't make a mistake, can't have a vacation. It doesn't
6 work unless you can automate the process. You have to be able
7 to automate the process.

8 In the example of -- I'll give you an example. If I want
9 to get every repair order created every single day and I want
10 the data of all the repair orders that were opened on that day,
11 I have to get that data after the service department closes so
12 they're not creating any more repair orders but before the job
13 stack runs and rolls all the closed ones into the history file.
14 That has to be done between 8:00 and 10:00. You're not going to
15 have an employee there between 8:00 and 10:00 to do that
16 manually every single day, so manual has no value. If you're
17 going to do data extractions, it has to be automated. The
18 minute that CDK takes away the ability to automate these data
19 extractions, they've taken away a valuable tool that I've had
20 for almost 30 years.

21 Q Can we have Plaintiff's Exhibit 152 on the screen, please?
22 While we're pulling it up, Mr. Fitkin, did you submit a couple
23 of declarations in this proceeding?

24 A I did.

25 Q And when was the last time you reviewed those?

1 their frustration of dealer-initiated downloads or, in CDK's
2 case, the price increase that we told them we were about to pass
3 through. So, yes, it's hurt us a lot.

4 Q Final topic, Mr. Andreu. Can we talk about your RCI
5 agreement with Reynolds? What limitations, if any, does
6 Reynolds place on Dominion's ability to tell dealers how much it
7 pays for integration?

8 A It gags us completely. We can't tell them anything, so I'm
9 expected to somehow pass through an \$893 charge on an \$1,152
10 product without telling them why.

11 Q Was Dominion ever accused of violating the price secrecy
12 provisions in its contract?

13 A We were.

14 Q What did Reynolds say?

15 A We put a line item on an invoice that said "integration
16 fee," and at the time, by the way, that fee was \$195 is what we
17 passed through. I don't recall what the offsetting Reynolds
18 charge was, but since it started at \$247, you can bet \$195
19 wasn't all of it.

20 Q What was Reynolds' response to your passing through --
21 communicating the pass-through?

22 A They sent a nasty letter to the then-product manager of
23 Sales Center, told us that we had -- defamation I think was on
24 there. They said that we violated the secrecy requirement.
25 They submitted -- they made us submit to an intimidating audit,

1 A No. We've not been in the business of trying to get money
2 off of the transactions. We're just trying to sell software.

3 Q In your experience are 3PA and RCI significantly better
4 integration services than SIS?

5 A No, not particularly. I haven't found anything about them
6 that's any better or improved on the transactions that I would
7 get from SIS.

8 Q Are there any ways in which RCI and 3PA are more limited
9 than SIS?

10 A Yeah. I did lose some functionality when I made the
11 transition to both of the different systems in different ways.
12 With the RCI system I lost the ability to make some of the
13 notifications that I do around parts, special order parts
14 orders. I can no longer get the information indicating when I
15 can make those notifications through the RCI program. I also
16 lost the ability to do some pushback information, and with CDK
17 there was some things I lost the ability to do as well.

18 Q So why does AutoLoop pay these higher integration fees from
19 Reynolds and CDK?

20 A It was a decision where we had to look at the things that
21 we were dealing with on the support basis and the constant loss
22 of business and upset dealerships saying, "Hey, you guys, you
23 got to keep your system up. We can't keep running our business
24 with your software if your software doesn't work."

25 So at that point it was a decision. We're like, "Okay. We

1 have to keep the software running so we have to pay this cost."

2 Q If there wasn't the threat of blocking from the defendants,
3 would you rather use SIS?

4 A We would be glad to go back to SIS.

5 Q I want to move to --

6 THE COURT: Just -- I mean, the cost is so clear. Why
7 wouldn't you rather pay \$79 instead of \$735.

8 THE WITNESS: Yeah, that's exactly --

9 THE COURT: That's the primary thing --

10 THE WITNESS: That's the primary thing. The other
11 thing we've run into from time to time with them is -- an
12 example would be is when we go back to -- when I worked with
13 SIS, if I needed additional information or I needed to develop a
14 new product that I wanted to give to the dealerships because
15 they've asked for a new functionality, I would go to them and
16 say, "Hey, can you get this additional data?" They would work
17 it out. They would come back and provide that data to me.

18 I make those requests with CDK and Reynolds, and if it can
19 be done, the time lines are between six months to a year with
20 additional recertification fees and paying for recertifying and
21 retesting. With SIS it was not difficult at all. So the
22 business relationship has changed drastically.

23 THE COURT: Thank you.

24 MR. MILLER: Thank you, Your Honor.

25 BY MR. MILLER:

UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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AUTHENTICOM, INC.

Plaintiff,

-vs-

Case No. 17-CV-318-JDP

CDK GLOBAL, INC., LLC
and THE REYNOLDS and
REYNOLDS COMPANY,

Madison, Wisconsin
June 27, 2017
1:50 p.m.

Defendants.

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STENOGRAPHIC TRANSCRIPT-SECOND DAY OF EVIDENTIARY HEARING

AFTERNOON SESSION

HELD BEFORE THE HONORABLE JAMES D. PETERSON,

APPEARANCES:

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Also present: Stephen Cottrell - Authenticom president
Steve Robb - IT technician

Lynette Swenson RMR, CRR, CRC
U.S. District Court Federal Reporter
120 North Henry Street, Rm. 520
Madison, Wisconsin 53703

1 Q Okay. Now, go down, and then it says "only if," and
2 then it lists three conditions. So CDK can pull the data
3 from the Reynolds DMS only if. Do you see the *only if*?

4 A Yes.

5 Q Let's go to the third. "CDK's access to the
6 Reynolds DMS does not materially degrade or otherwise
7 materially adversely affect the operation of the
8 applicable Reynolds DMS or place Reynolds and/or a
9 Reynolds dealer at a material operational or security
10 risk - provided, however, that any such material adverse
11 risk -- effect or risk covered by this Section 4.6 must
12 be demonstrated to CDK by Reynolds with clear and direct
13 evidence and that CDK shall be given a reasonable
14 opportunity to cure any such material adverse effect or
15 risk." Do you see that?

16 A Yes.

17 Q Did Reynolds ever invoke this clause?

18 A Not that I can remember.

19 Q Reynolds never even invoked this clause that the
20 thousands of usernames that CDK was using put any
21 material effect or risk on Reynolds' system; isn't that
22 right?

23 A During this period of time, because we had to
24 protect it, we didn't know what they were doing, so it
25 did not put a material impact on the system.